IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1643 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Nos. 1 and 3 to 5 No. No.2 Yes.

JAYANTILAL NARANDAS BY HIS HEIRS

Versus

INDRAVADAN MAGANLAL

Appearance:

MS.KJ BRAHMBHATT for Petitioners

MR HM PARIKH FOR MR SN SHELAT for

Respondent Nos.1 & 2.

Respondent No.3 served.

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 13/07/98

ORAL JUDGEMENT

This is tenants revision under section 29(2) of the Bombay Rent Act, 1947.

The respondents No.1 and 2 being landlords of the

premises in dispute filed Civil Suit for eviction of the revisionists on the ground of subletting. It was not an isolated act of subletting but there was specific allegation that there were series of sublettings. First subletting was to Miyan Mohammad Ibrahim Panwala of a portion of tenanted accommodation over which he was put in exclusive possession and Rs.5/- per day were charged as rent from the said sub tenant. There was second subletting when the entire premises was allegedly sublet to Arvindlal Ishwarlal on Rs.300/- per month. Third subletting seems to have come into existence during the pendency of the suit, when Babubhai Bhelwala was inducted as sub tenant in the entire premises and Rs.200/- p.m. were charged from him. The tenancy was determined by a notice. The premises was not vacated by the tenant and the sub-tenant, accordingly a suit for eviction was filed.

The suit was resisted by the defendants denying that the standard rent was Rs.28/- p.m. on which the premises was let out. According to the defendant No.1 the agreed rent was Rs.25/- p.m. which was enhanced to Rs.28/- p.m. He denied his liability to pay rent at the enhanced rate. The allegation of the sub-tenancy was also denied. It was a specific case that the defendant No.2 was kept in the premises as servant for runing hotel by the defendant No.1.

The suit was decreed by the Trial Court holding that it was a case of illegal sub-tenancy. An appeal was preferred which too was dismissed. Having remained unsuccessful in the two Courts below this revision has been filed by the tenant.

I have heard learned Counsel for the parties at length and gone through the two judgments on record. It is the case of concluded finding of fact recorded by the two Courts below that at three intervals sub-tenancy was created by the tenant in chief. When such is the finding the scope of interference in revision becomes very much limited. The scope of reappreciation of evidence by the revisional Court is also very much minimised. The revisional Court cannot reassess the evidence with a view to substitute its own findings over the findings of the two Courts below. Even if two views are possible from the evidence on record the revisional Court will hesitate in substituting its own views. Moreover, the instant case is not a specimen where two views are possible from the evidence on record. The two Courts below have

concurrently recorded finding that it was a case of illegal sub-tenancy hence, interference in this revision is hardly required.

The only point to be seen is whether the judgments of the two Courts below are in accordance with law or not. In a case like this it is to be seen whether findings of the two Courts below are in accordance with section 13(1)(e) of the Bombay Rent Act,1947. Obviously it is not a case where the alleged sub-letting took place prior to 1959 within the meaning of section 15(2) of the Act so as to be protected within the scope of ordinance of 1959 which was subsequently converted into an Act.

Time and again the Apex Court has held that in order to establish sub-tenancy, it is really difficult for the landlord to adduce direct evidence that the sub-tenannt was paying rent or that there was some rent note executed between the tenant in chief and the sub-tenant. Illegal sub-tenancy is always a secret contract hardly within the knowledge of the landlord. The landlord cannot have any direct knowledge about the terms of the alleged contract of sub-tenancy. It is also difficult for the landlord to adduce direct evidence regarding receipt of valuable consideration by the tenant in chief from the sub-tenant. Keeping in view these difficulties that the Courts have laid down certain tests in order to establish sub-tenancy. First important test is that the tenant in chief should have parted with exclusive possession of either entire premises or a portion thereof to alleged sub-tenant. The second condition is that parting of possession either of the part or of the whole premises by tenant in chief to the sub-tenant should be for valuable consideration. The valuable consideration includes rent, licence fee in cash or in any other manner. It has also been held in various cases that since direct evidence of valuable consideration is hardly available to the landlord, the Courts from the circumstances of the case, emerging from the evidence on record, can infer that parting of possession was for valuable consideration.

Keeping in view of these tests the judgments of the two Courts below have been scrutinized. It is one of the cases where the two Courts below have concurrently recorded finding that initially there was exclusive transfer of possession of part of the tenanted accommodation to Miyan Mohammad who was running a hotel shop and was paying Rs.5/- per day as rent to the tenant

in chief. This happened somewhere in the year 1973-74 and Miyan Mohammad Ibrahim for a period of about six months remained sub-tenant. This finding was returned after appreciating oral evidence on record.

Then comes next stage when the entire premises was sub-let to Arvindlal Ishwarlal and last stage was when the entire premises was again sub-let to Babubhai Bhelwala.

In the lower Appellate Court it was contended that the alleged sub-tenancy in favour of Babubhai took place during the pendency of the suit and since the plaint was got amended this could not be a ground for passing decree for eviction. However,on the other two grounds of sub-letting to Miyan Mohammad and Arvindbhai the two Courts below remained concurrent in holding that it was a case of illegal sub-letting to them. Ofcourse the Trial Court within the meaning of section 13(1)(e) expressed its opinion that either it was a case of sub-letting or assignment or transfer in any other manner the interest of the tenant in chief to the sub-tenant. However, this vague finding was clarified by the lower Appellate Court in its categorical finding that sub-tenancy was created. This was done after carefully considering the evidence on record.

As indicated above the evidence on record was rightly appreciated on proper lines by the two Courts below hence this Court will not reassess the evidence. It was next contended that the witnesses examined by the tenant in chief were either related or interested. However, witness who is related with the cause of the plaintff or is interested with the plaintiff cannot be disbelieved only on this ground. Only thing is that the rule of caution has to be kept in mind while assessing the evidence of such witness and the said rule of caution is whether witness successfully stood the test of cross-examination or he has entered the witness box only to oblige the plaintiff because of his relationship or interest with the plaintiff. The two Courts below have considered the cross-examination of Champaklal Maganlal, brother of the plaintiff. He was rightly believed by the two Courts below for which cogent reasons are given by them. He has supported the case of the plaintiff. He was managing the affairs of the property. He is a witness who collected Rs.5/- per day as rent from Miyan Mohammad. He also deposed that Miyan Mohammad was carrying on betel shop in a portion of the tenanted accommodation for about six months. This witness had categorically proved that Miyan Mohammad was put in

exclusive possession of portion of tenanted accommodation and this was for valid consideration in as much as Rs.5/-per day were charged. He further deposed that next sub-letting was done to Arvindlal Ishwarlal who was paying Rs.300/- p.m. From him also he collected rent. This sub-tenant was carrying on hotel business and he did so for one year. These two persons viz. Miyan Mohammad and Arvindlal have not been examined.

It was suggested that Arvindlal was servant who was preparing tea and snacks in the hotel run by the defendant No.1. This plea was also rightly disbelieved by the two Courts below on the strength of absence of name of Arvindlal in the muster roll kept by the defendant No.1. Learned Counsel for the revisionist has contended that mere presence of Arvindlal in the shop is no ground for inferring sub-tenancy. A decision rendered in the Case of M.D.Salim Vs.M.D. Ali since deceased through his legal representatives M.D.Assim and others [(1987) SCC Pg.270] was cited. This case is distinguishable on facts because here there was an agreement between the tenant in chief and the person alleged to be sub-tenant. In this agreement the landlord was also a signatory. However, there was a specific stipulation in the agreement that only management was transferred to the alleged third party and not that it was a case of sub-tenancy. In the case before me there is no such agreement and more over it could not be successfully established that Arvindlal was servant in the premises. If the tenant in chief alleges that Arvindlal was occupying the premises as servant and was preparing tea and snacks for the tenant in chief then it was for the tenant in chief to establish by cogent evidence that Arvindlal was none else than his servant. On this point he miserably failed. Thus the landlord on the facts and circumstances of the case could not have adduced better evidence in the instant case.

It was also pointed out by learned Counsel for the respondents that licence in the name of defendant No.1 has not been brought on record. The contention of the learned Counsel for the revisionist has been that since licence still stands in the name of the defendant No.1 the defendant No.2 could not have carried on hotel business. If the hotel business was carried on by the defendant No.2 without any licence that would incur penal liability under some other enactment but not under The Bombay Rent Act, 1947.

The next cited case by learned Counsel for the revisionist was Jagdish Prasad Vs. Smt. Angoori Devi,

AIR 1984 SC Pg.1447. This is however a case under U.P.Urband Building Regulation Act, No. XIII of 1972 where provisions are altogether different. Certain presumptions of sub-letting have been laid down under sections 12 and 20(2)(e) of the said Act. The scope of section 25 of the Provincial Small Causes Courts Act was also under active consideration of the Apex Court. Consequently the verdict of this case cannot be directly applied to the case under consideration before me. However, it was stressed that this case can be applied for holding that mere presence of stranger is no ground for holding sub-letting. Accepting this contention as it is, it can be said that since it is not the case either of the tenant in chief or of the sub-tenant that either Miyan Mohammad or Arvindlal was stranger hence it cannot be said that it was a case of presence of mere stranger. Consequently on this ground also the eviction of the tenant in chief and sub-tenant cannot be served.

There is also corroborative evidence that Rs.200/- were charged as rent from one of the sub-tenants and Rs.300/- p.m. as rent from the other sub-tenant. There is evidence that receipt was also issued by the tenant in chief.

I do not find force in the submission that wrong adverse inference was drawn by the Trial Court due to non production and non examination of these two persons viz. Arvindlal and Miyan Mohammad. If Arvindlal was servant then naturally he should not have felt hesitation in obliging and supporting the case of the defendant No.1.

Harish Hiralal is another witness of the landlord who was having tailoring shop adjoining the suit premises. He also supported the case of the plaintiff regarding passing of exclusive possession and also receipt of valuable consideration by the tenant in chief. He stated that Arvindlal was paying Rs.10/- per day as rent. He had also said that Miyan Mohammad was paying Rs.5/- per day as rent to the tenant in chief. He specifically said that he came to know from the sub -tenant about these payments. He cannot be said to be a witness whose evidence is hearsay. The alleged sub-tenants are alive. They could have proved that Harish Hiralal is untrust worthy witness.

Natvarlal Atmaram is third witness who was also rightly relied upon by the two Courts below. He was working as servant in the hotel run by Vasant Babubhai and was preparing tea etc. Thus, it is also proved that

exclusive possession was handed over and sub-tenant was paying rent. This witness was also rightly believed by the two Courts below.

Interested denial of the tenant in chief was rightly disbelieved by the two Courts below .

The other circumstances were also taken into consideration by the Courts below. It was observed that the tenant in chief was plying Rickshaw and in such circumstances it cannot be said that he had effective control over the hotel business or hotel business was being run by him. Learned Counsel for the revisionist contended that evidence is that he was plying Rickshaw only for 2 hrs. a day and in this circumstance no such inference could be drawn. However, there is no evidence that after 2 hrs. of plying of rickshaw the tenant in chief was in effective control of the hotel business. Consequently from the evidence on record and the circumstance of the case the two Courts below have rightly concluded that it was a case of illegal sub tenancy in asmuch as initially possession of part of the premises was transferred and then exclusive possession of the entire premises was transferred and that too for valuable consideration. In these circumstances, the two Courts below committed no error in passing the decree for eviction. Judgments and Decrees of the two Courts below being in accordance with law, no interference in this revision is called for. The revision is accordingly dismissed. Parties to bear their own costs.

Sd/-
(D.C.Srivastava, J.)

m.m.bhatt
